

SENATE BILL 323

By McNally

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 52, Part 1, relative to charitable gift annuities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 52, is amended by deleting Part 1 and by substituting instead the following:

Section 56-52-101. This part shall be known and may be cited as the "Charitable Gift Annuities Exemption Act."

Section 56-52-102. As used in this part, unless the context otherwise requires:

(a) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one (1) or two (2) lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(b) "Charitable organization" means an entity described by:

(1) Section 501(c)(3), Internal Revenue Code of 1986 [26 U.S.C.

Section 501(c)(3)]; or

(2) Section 170(c), Internal Revenue Code of 1986 [26 U.S.C. Section 170(c)].

(c) "Qualified charitable gift annuity" means a charitable gift annuity described in Section 501(m)(5), Internal Revenue Code of 1986 [26 U.S.C. Section 501(m)(5)], and Section 514(c)(5), Internal Revenue Code of 1986 [26 U.S.C. Section 514(c)(5)], that is issued by a charitable organization that on the date of the annuity agreement:

(1) Has a minimum of three hundred thousand dollars (\$300,000) in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and

(2) Has been in continuous operation for at least three (3) years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three (3) years.

Section 56-52-103.

(a) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(b) A charitable gift annuity issued before July 1, 2001, is a qualified charitable gift annuity for purposes of this part; and the issuance of such charitable gift annuity does not constitute engaging in the business of insurance in this state.

Section 56-52-104.

(a) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor in writing in the annuity agreement that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner of commerce and insurance or protected by an insurance guaranty association.

(b) The notice provisions required by subsection (a) must be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

Section 56-52-105.

(a) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner of commerce and insurance in writing by the later of ninety (90) days after the effective date of this act or the date on which it enters into the organization's first qualified charitable gift annuity agreement. The notice shall:

- (1) Be signed by an officer or director of the organization;
- (2) Identify the organization; and
- (3) Certify that:
 - (A) The organization is a charitable organization; and
 - (B) The annuities issued by the organization are qualified charitable gift annuities.

(b) The organization shall not be required to submit additional information except to determine appropriate penalties that may be applicable under § 56-52-106.

Section 56-52-106. The failure of a charitable organization to comply with the notice requirements imposed under § 56-52-104 or § 56-52-105 does not prevent a charitable gift annuity that otherwise meets the requirements of this act from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of § 56-52-104 and § 56-52-105 by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the

requirements of § 56-52-104 and § 56-52-105. The commissioner may fine the charitable organization in an amount not to exceed one thousand dollars (\$1,000) per qualified charitable gift annuity agreement issued until such time as the charitable organization complies with § 56-52-104 and § 56-52-105.

Section 56-52-107. The issuance of a qualified charitable gift annuity does not constitute a violation of title 56, chapter 8, part 1.

SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.